

## REMARKS

In the aforementioned Office Action, prosecution is reopened in the midst of appeal. Applicants elect to file a response pursuant to 37 C.F.R. § 1.111.

In the same Office Action, claims 1-3, 8-10 and 13-14 are rejected under 35 U.S.C. § 102(e) as anticipated by *Larsson* (U.S. Patent No. 6,707,862). In addition, claims 4-7 and 15-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Larsson* in view of *Bark et al.* (U.S. Patent No. 6,553,235). Claims 11 and 12 are objected to.

Applicants respectfully disagree and submit that independent claims as pending clearly define over *Larsson*. *Larsson* teaches an estimation of the next data rate in a data frame based on the bit energy and the data rate of the current frame, and further the bit energy of the most recent data frame (FIG. 4 and the relevant description on col. 6, lines 17-54 of *Larsson*). The bit energy of the most recent data frame of *Larsson* is not the “data rate history” and certainly not the “congestion indicator” as claimed by Applicants. As to *Bark et al.*, it has been extensively distinguished previously.

Nevertheless, to further define over the references, independent claims 1 and 13 have been amended. Specifically, each of claims 1 and 13 now includes the additional recitation of receiving “a congestion indicator from a base station” and further the “congestion indicator includes at least one data bit.” Nowhere in the cited references of record can there be found of any explicit or implied teachings as claimed.

Accordingly, Applicants respectfully submit that the amended claims are clearly patentable over the prior art. In the event the amendment fails to convince the Examiner, Applicants respectfully request the amendment be entered for purposes of appeal.

**PATENT**

By this amendment, new claims 17-20 have been added. Supports for new claims 17-20 can be found in paragraphs [1055] and [1056] of Applicants' disclosure. New claims 17-20 are submitted to be patentable for the same reasons claims 1-16 are submitted to be patentable.

In light of the foregoing, the application is believed to be in condition for allowance. Reconsideration and allowance are respectfully requested.

In the event of any fees that may be due or any overpayments that may be associated with this response, please charge or deposit the amount to Deposit Account No. 17-0026.

Respectfully submitted,

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